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CASES AND MATERIALS ON COMMERCIAL AND CONSUMER TRANSACTIONS

edited by

JACOB S. ZIEGEL

Professor of Law

Osgoode Hall Law School

and

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Professor of Law

The University of Alberta

Volume 1

August, 1971

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This casebook has been assembled with unseemly haste and would not have been attempted at all this year were it not but for the fact that the materials I have been using are now substantially out of date --- such has been the pace of deelopment in this branch of the law.

This is not to say that this collection claims to be exhaustive or mint new in even a majority of respects. One builds on the past; one does not destroy it. Commercial transactions cover such a multitude of sins that some ruthless pruning was inevitable. I have not, for example, included some basic contract cases (e.g., on the "Battle of the Forms" or on uncertainty) even though they form part of the traditional sales course, on the assumption that the student will already have covered them in his first year.

I have also omitted the usual Statute of Frauds cases, not necessarily because the student will already have mastered them but because Section 17 has declined rapidly in importance, if only may judge by the paucity of recent Canadian jurisprudence. My principal touchstone for selection has been relevance and a powerful urge to introduce the student to the expanding horizon of commercial transactions and the problems it raises.

I much regret that time did not permit me to include some materials on export transactions, guarantees, letters of credit and the cheque as a mode of payment. I feel less need to apologize for the absence of a general section on negotiable instruments. If the subject deserves to be taught at all (as assuredly it does), I believe it should be taught properly and not exposed to the humiliation of a jet set type world tour.

The two major influences in contemporary Canadian commercial law are surely the Uniform Commercial Code and the growth of "consumerism". Presumably few would gainsay the importance of the former though it is surprising how little attention

the Code still receives in many Canadian law schools I assume the explanation is that teachers are unwilling to impose additional burdens on students who are already struggling with more statutory materials than in most other courses. Still, the adoption of the Ontario Personal Property Security Act and the efforts of the Canadian Bar Association to promote a Uniform Personal Property Security Act will force us to change our attitudes whether we like it or not.

The reaction to "consumerism" and the importance I have attached to it in this collection of materials will, I suspect, be of a different order. There will be those who will damn the whole movement as an unmitigated disaster and resent its intrusion into the manly world of commercial law. My answer to them is that they are out of touch with reality and do themselves as well as their clients a grave disservice.

A more likely reaction will be one of puzzlement --- puzzlement why I have confused consumer law with commercial law and not kept the subjects separate. I reply that there is no confusion; consumer law and commercial law are twin brothers and the lawyer who thinks he can solve his clients' problems within the confines of the Sales of Goods Act and the Consumer Protection Act is singularly ill-equipped for his profession. Even granting that only a small minority of law graduates will ever have occasion to advise consumers on a regular basis (a matter surely more for lament than for rejoicing), it is just as important for the businessman to know where he stands with respect to the growing volume of legislation and case law. My surprise has been not at the importance of the interaction but with its ubiquitousness: such has been the explosive growth of "consumerism" in Canada during the past five years.

I am grateful to Barry Fisher, an LL.B.III student at Osgoode Hall, for assisting me in the

mpilation of these materials and to the good ladies
the Materials Distribution Centre and my own
cretary, Mrs. C. McWhinnie, for making possible
their reproduction at such short notice. I regret
at time has not permitted me to annotate the
aterials and this, as well as many other refining tasks,
st be left to a future edition.

J.S.Z.

sgoode Hall Law School,
ugust, 1970

This joint edition is similar in content and form to Professor Ziegel's casebook of 1970 and thus most of the prefatory comments of that edition are still relevant. The major differences lie in the inclusion of a section on the Statute of Frauds, a chapter on Documentary Transactions (including guarantees and export transactions), Part III on negotiable Instruments, a number of abstracts of relevant cases, and some commentary. A few new cases have been added and some deleted. A national as distinct from a provincial character of the contents has been emphasized. A sprinkling of problems and questions have also been included in the hope they will increase the pedagogical value of the materials. Much more could have been done if time had permitted.

The inclusion of a number of problems is based on the belief that frequently an appropriate problem can do more for the student than reading another case. Not only do problems permit a change of pace and provide an opportunity to explore relevant law and policy, but of equal or greater importance is the opportunity they afford the student for independent thinking.

In keeping with the touchstone of reality the subject of Negotiable Instruments or Bills and Notes as it has been traditionally known, is treated somewhat briefly in these materials. Although the subject matter which appropriately falls within the boundaries of a course on Commercial Law has been expanding rapidly over the last two decades, curricular time for the course typically has not. Indeed in many instances the time allotted has been reduced. This phenomenon explains in part the condensed treatment of Negotiable Instruments in Part III. Another important factor is what appears to be a diminishing significance of the subject to the practising bar. The basic principles are, however, exceedingly important and thus are included, not only for their ultimate value to the practitioner who is faced with a problem in the area, but also because they enable one better

to understand many other aspects of Commercial Law.

I want to express my appreciation to those responsible for the physical preparation of the book through secretarial and other help -- Mrs. Ann Dryden, Nancy Wagner, Barbara Bristow, and Jackie Gilbert. I am particularly grateful to Peter T. Costigan, Editor-in-Chief of the Alberta Law Review, for the countless hours of able assistance he has generously given.

D. W. L.

University of Alberta
August, 1971

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TABLE OF ABBREVIATIONS

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ATIYAH	The Sale of Goods, 3rd ed. (1966)	ABDA	Assignment of Book Debts Act, R.S.O. 1960, c. 24
BENJAMIN	Benjamin on Sales	B.E.A.	Bills of Exchange Act (Can.), as amended 1970, Bill
BOGERT, BRITTON & HAWKLAND	Cases and Materials on Sales and Security, 4th ed.	B.S.A.	Bills of Sale Act, R.S.O. 1960, c. 34, as amended
BOLTON	The Making of Business Contracts (1965)	C.P.A.	Consumer Protection Act, Stat. Ont. 1966 c. 23, as amended, and O. Reg. 207/67 & O. Reg. 265/67
CCH CANADIAN	Canadian Sales and Credit Law Guide (Loose leaf, 2 vols.)	C.P.A. (Man.)	Consumer Protection Act, Stat. Man. 1969, c. 4, amended 1970.
CCH (U.S.)	Instalment credit Guide (Loose leaf, 2 vols.)	C.L.A.A.	Credit and Loan Agreements Act, Stat. Alta. 1967, c. 11
FALCONBRIDGE	Banking & Bills of Exchange, 7th ed.	C.S.A.	Conditional Sales Act, R.S.O. 1960, as amended
FRIDMAN	Sale of Goods (1966)	D.S.C.A.	Direct Sales Cancellation Act, Stat. Alta. 1966, c. 28
GOODE & ZIEGEL	Hire-Purchase and Conditional Sale: A Comparative Study (1965)	Factors Act	R.S.O. 1960, c. 129
HONNOLD	Cases & Materials on Sales and Sales Financing, 2nd ed.	P.P.S.A.	Personal Property Security Act, Stat. Ont. c. 2
SUTTON	The Law of Sale of Goods in Australia & New Zealand (1967)	S.C.A.	Sale of Goods Act, R.S.O. 1960, c. 358, amended 1967, Bill 89
WILLISTON	Williston on Sales (Revised ed., 4 vols)	U.C.C.	Uniform Commercial Code (1962 Official Text)
ZIEGEL & FOSTER	Aspects of Comparative Commercial Law (Montreal, 1969)	U.C.C.C.	Uniform Consumer Credit Code (U.S.)
	N.B. The above volumes will be kept on reserve.	U.P.P.S.A.	Draft Uniform Personal Property Security Act, August 1969 version
		W.R.A.	Warehouse Receipts Act

